

Talking Points for Agremax/AES

- EPA is concerned with the use of Agremax as structural fill in property owned by AES located north of the power plant, over the South Coast drinking water aquifer, in a flood zone adjacent to wetlands and the Guaymani River (reportedly used for subsistence fishing), and upgradient of numerous private wells believed to be used for drinking and irrigation water supply.
- Analysis of Agremax conducted by ORD confirms that it leaches orders of magnitude above the EPA Maximum Contaminant Level drinking water standard for arsenic, as well as above the EPA CERCLA Residential Screening Levels for several heavy metals.
- A conceptual site model incorporating these results with potential exposure pathways and receptors, both human and ecological, would likely support a finding of potential imminent and substantial endangerment under RCRA.
- Beyond site specific disposal concerns, EPA has determined that coal ash disposal poses potential risks, resulting in a 2010 proposal for hazardous waste designation.
- EPA has proposed AES enter into a RCRA 7003 Order on Consent with the following injunctive relief:
 - Detection monitoring at the well field and power plant, with triggers for corrective action.
 - Construction of an impervious pad for Agremax storage at the power plant.
 - Environmental and engineering controls for future Agremax use, subject to EPA review.
 - Construction of a RCRA-compliant monofill for disposal of ash/Agremax not reused (such construction was suggested by AES during at the March 2012 EPA sampling inspection at the power plant, but has not subsequently been discussed by AES).

Current Status:

In a December 7, 2012 teleconference with EPA, AES stated their fundamental disagreement with EPA's position on Agremax, disputed all references to risk, and reiterated its position that it is legally producing and marketing a safe, trademarked product. AES also recently provided us a

letter it sent to EQB refuting our comments to the EQB draft guidelines.

Background:

Agremax, an aggregate of hydrated coal ash from the AES Guayama power plant, is being sold as a product under a Puerto Rico EQB resolution excluding it from being a solid waste. This material is being deposited on the ground as structural fill and for road construction, which we consider disposal due to the excessive amounts used and the underlying toxicity of the ash. The EQB resolution does not require any environmental or engineering controls for Agremax, as are required by many states for beneficial coal ash reuse. The resolution is based on the RCRA Toxicity Characteristic Leaching Procedure (TCLP), a test not designed to measure leaching under the conditions Agremax is being used.

Agremax has been used as structural fill in a property owned by AES located north of the power plant, over the South Coast drinking water aquifer, in a flood zone adjacent to wetlands and the Guaymani River (reportedly used for subsistence fishing), and upgradient of numerous private wells believed to be used for drinking and irrigation water supply. The AES well field and other Agremax use sites appear similar to known or potential damage cases documented by EPA from unlined coal ash landfills, in which off-site damage to drinking water sources have occurred after years of leaching.